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MEETING
STATE OF CALIFORNIA
INTEGRATED WASTE MANAGEMENT BOARD
SPECIAL PERMITTING AND COMPLIANCE COMMITTEE

JOE SERNA JR., CALEPA BUILDING
FIFTH FLOOR, TRAINING ROOM 5
1001 I STREET, 2ND FLOOR
SACRAMENTO, CALIFORNIA

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMITTEE MEMBERS

Ms. Rosalie Mulé, Chairperson(via teleconference)

Mr. Jeffrey Danzinger, Acting Chairperson

Ms. Cheryl Peace(via teleconference)

STAFF

Mr. Mark Leary, Executive Director

Ms. Julie Nauman, Chief Deputy Director

Mr. Elliot Block, Chief Counsel

Mr. Ted Rauh, Program Director

Mr. Steve Levine, Staff Counsel(via teleconference)

Mr. Bill Orr, Chief, Cleanup, Closure & Financial
Assurances Division

Mr. Bernie Vlach, Manager, Closure & Financial Assurances
Branch

ALSO PRESENT

Mr. Glenn Acosta, Los Angeles County Sanitation

Mr. Chuck Helget, Allied Waste

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1 PROCEEDINGS

2 COMMITTEE MEMBER DANZINGER: All right. Well,
3 welcome to the November 16th Special Meeting of the
4 Permitting and Compliance Committee. You know, we've got
5 agendas here on the table there.

6 Anyone who wants to speak on an item, you know
7 the drill. Fill out the speaker slip, get it to Donnell,
8 and you'll have a chance to address the Committee.

9 Make sure our cell phones and pagers are turned
10 off.

11 Quick announcement, it's already obvious to all
12 of you, Chair Mulé and Member Peace are participating from
13 a remote teleconference location.

14 So, Donnell, I'll ask you if want to go ahead and
15 call the roll.

16 SECRETARY DUCLO: Member Danzinger?

17 COMMITTEE MEMBER DANZINGER: Here.

18 SECRETARY DUCLO: Member Peace?

19 COMMITTEE MEMBER PEACE: Hear.

20 SECRETARY DUCLO: Chair Mulé?

21 CHAIRPERSON MULÉ: Here.

22 COMMITTEE MEMBER DANZINGER: Okay. Any ex
23 partes?

24 CHAIRPERSON MULÉ: I'm up to date.

25 COMMITTEE MEMBER PEACE: As am I.

1 COMMITTEE MEMBER DANZINGER: Okay. I am as well.

2 We'll go ahead and turn it over to staff Program
3 Director Report.

4 Ted.

5 PROGRAM DIRECTOR RAUH: I have nothing to report
6 other than we have the item before you today. And to
7 present it, Bill is going to lead off with the
8 introduction, followed by Bernie Vlach to provide the
9 detailed discussion of the regulations.

10 COMMITTEE MEMBER DANZINGER: Okay. Thanks.

11 Bill.

12 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

13 CHIEF ORR: For the record, I'm Bill Orr, the
14 Chief of the Cleanup, Closure & Financial Assurances
15 Division.

16 The item before us today is a request for a
17 direction for rule making to notice an additional 15-day
18 public comment period on the proposed regulations for
19 landfill closure and post-closure maintenance cost
20 estimates.

21 The Board gave original direction to staff to
22 notice the 45-day public comment period back on March
23 13th. The comment period commenced on September 28th.
24 And during the comment period early on we held actually
25 two workshops -- two informal workshops to anticipate

1 comments that we might be receiving. The first one was on
2 October 3rd. Shortly thereafter, we became aware that a
3 number of additional changes had been made to the proposal
4 that were not authorized as part of the original proposal.

5 A letter was sent out on October 19th. And
6 basically the majority of the changes that will be -- that
7 are part of the rule-making notice today are intended to
8 go back to the originally approved version of the
9 regulations.

10 For those of the people that are in the room,
11 there are actually two attachments. Both of those
12 attachments reflect the letter that was sent out on
13 October 19th.

14 Attachment 2 is what we'll call the official
15 version. It basically reflects the changes that were
16 included in the 45-day notice. And then it takes them
17 back out to reflect the March version that was approved by
18 the Committee for notice. In addition, it includes
19 additional proposed changes based on the comments that
20 were received at the workshop.

21 In addition, there is what we call the clean
22 version, which is Attachment 3. And the intention with
23 that version is simply to show if we had not made any
24 unauthorized changes subsequent to the Committee
25 direction, what would that look like. And if you look at

1 Attachment 3, there are much fewer changes. And those
2 primarily reflect the comments that we received during the
3 staff workshops.

4 Since that time, the public comment period closed
5 on November 13th. We held the official public hearing on
6 November 14th. We received during the public comment
7 period seven sets of comments. We received one additional
8 set of comments subsequent to the end of the public
9 comment period. We received no oral comments at the
10 public hearing on November 14th.

11 Are there any questions about the versions or the
12 process up until this point?

13 COMMITTEE MEMBER DANZINGER: So, Bill, you're
14 proposing that for purposes of today in the discussion
15 that we work off the clean version?

16 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

17 CHIEF ORR: That would be the best version to
18 work off today. When we submit it to OAL, we will submit
19 the official version back to them. But for today's
20 purposes, the best version to work off would be Attachment
21 3, the clean version.

22 COMMITTEE MEMBER DANZINGER: The clean version.
23 Okay.

24 CHAIRPERSON MULÉ: Excuse me. This is Rosalie.

25 So, Bill, when you say the official version,

1 you're saying the Board-approved version back from March?

2 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

3 CHIEF ORR: They both are back to the

4 Board-approved version from March. But the Attachment 2

5 actually includes the whole history.

6 CHAIRPERSON MULÉ: Right.

7 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

8 CHIEF ORR: It puts things in and then takes them

9 back out.

10 COMMITTEE MEMBER DANZINGER: And is this the one

11 that will go out --

12 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

13 CHIEF ORR: Yes.

14 COMMITTEE MEMBER DANZINGER: -- for 15-day

15 comment?

16 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

17 CHIEF ORR: Yes.

18 COMMITTEE MEMBER DANZINGER: Because that's the

19 one that has to show --

20 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

21 CHIEF ORR: -- what we put in the proposed

22 version and what we've taken out and then any additional

23 changes that we've proposed.

24 COMMITTEE MEMBER DANZINGER: Okay. All right.

25 Cheryl, Rosalie, does that sound all clear to

1 you?

2 COMMITTEE MEMBER PEACE: Clear as mud. Yeah, I
3 think I got that.

4 (Laughter.)

5 COMMITTEE MEMBER PEACE: Yeah, I realize that
6 there were some changes that weren't authorized by the
7 Committee and we had to go back and, you know, change
8 that, put it back the way it was. I understand all that.
9 I'm not unclear about that.

10 I don't know where we go from here. But I did
11 have some questions.

12 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

13 CHIEF ORR: Well, what the next step is is that I
14 will turn the -- if we don't have any additional questions
15 on where we are in the process at this point, then I would
16 turn the presentation over to Bernie Vlach, and he'll
17 actually go through and do a summary of the proposed
18 changes that would be in the 15-day notice and
19 highlighting specifically the comments that we've received
20 this week. The comments that we've received this week are
21 not reflected in the version that you have before us.

22 So basically we'll go through a summary of the
23 comments received and any additional changes that staff is
24 proposing that would need to be reflected in that 15-day
25 notice. So that would be the next step

1 COMMITTEE MEMBER DANZINGER: Okay. So then we'll
2 Bernie. And then, Cheryl, we can hit on any Committee
3 member questions either before or after public comments.

4 COMMITTEE MEMBER PEACE: Okay. Sounds good.

5 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

6 VLACH: All right. My name is Bernie Vlach. I'm
7 the Supervisor of the Closure and Financial Assurances
8 Branch. And I'm going to say good morning to the Chairman
9 Danzinger and Board members Mulé and Peace.

10 COMMITTEE MEMBER DANZINGER: It's Chair Mulé and
11 Members Danzinger and Peace. Correcting for the record.

12 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

13 CHIEF ORR: Lieutenant Chair.

14 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

15 VLACH: I'm going to spend a little time talking
16 about the comments that were received both during the
17 45-day comment period in the workshops and those received
18 in writing.

19 I'd like to start off by saying that if the
20 Committee does not consider any additional changes in the
21 attachments, then the attachments reflect all the changes
22 that are synthesis of changes through the 45-day comment
23 period, with the exception of any new issues that may have
24 come up during the written comments. We had to publish
25 the attachments prior to the end of the comment period,

1 and so there were a couple of new issues that came up
2 during -- that we identified when we finally received the
3 written comments. They all came in on the very last day.
4 One of them came in actually after the time clock.

5 So I just wanted to mention that upfront, that
6 the attachments reflect only those issues from the
7 beginning in March that the Board authorized -- or the
8 Committee authorized through the workshops, but don't
9 necessarily reflect the comments we received in writing.
10 So I'll spend a little more time on that.

11 I just want to say, first of all, that the
12 written comments that we received on Tuesday and one on
13 Wednesday really were of three types. They were comments
14 that supported the proposed changes that we -- that the
15 Committee had authorized in March. The comments
16 also -- there were many comments that were really the same
17 comments that were made during the workshops. They were
18 public testimony. And then many people just followed up
19 with a letter, a FAX, and so they were just duplicative.

20 But there were a couple of new issues that I'll
21 talk about later in more detail that came up with those
22 written comments that we need to spend a little more time
23 on.

24 And is that pretty clear so far, I hope?

25 COMMITTEE MEMBER DANZINGER: Yes.

1 COMMITTEE MEMBER PEACE: Yes.

2 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

3 VLACH: All right. Now, I'm going to talk now
4 about sort of the general nature of the comments. I'm
5 going to try to break them down into maybe six different
6 types of comments.

7 We received comments relating to what has been
8 called a post-closure maintenance contingency -- cost
9 estimate contingency. Staff had proposed in the March
10 version that we include a 20 percent contingency for
11 post-closure maintenance cost estimates. And that was a
12 big discussion during the workshops and there were
13 comments made also in writing. And as part of the
14 dialogue, it's the staff's recommendation that that
15 contingency issue be postponed until Phase 2 of the
16 regulations, which will be -- required to be completed in
17 July of 2009.

18 COMMITTEE MEMBER PEACE: That was one of the
19 questions I had, on why you decided to postpone that. Do
20 you think it's maybe not needed or just because it was so
21 controversial or --

22 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

23 VLACH: Well, not necess -- I mean it was a bit
24 controversial. But I think the idea that came across
25 during the workshops, and I think we, staff, would have to

1 agree, is that we would look at that issue in a context of
2 broader financial assurance, a scheme that the Board would
3 want to develop that deals directly with that post-closure
4 maintenance phase. We've been primarily dealing with
5 closure issues. And the long-term post-closure
6 maintenance is really something that we're going to deal
7 with more in Phase 2. So this seemed to be an issue that
8 really belonged in Phase 2 rather than Phase 1.

9 COMMITTEE MEMBER PEACE: But when I look it, it
10 says we're supposed to be, you know, working on
11 cost-estimate issues only this time. And to me that's
12 still a cost-estimate issue, not like a long-term --

13 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

14 VLACH: Yes, but -- yeah, well --

15 COMMITTEE MEMBER PEACE: -- might be going into
16 that we'll be looking at. It's a cost-estimate issue.

17 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

18 VLACH: Well, there certainly would --

19 COMMITTEE MEMBER PEACE: You don't -- you're not
20 concerned about the fact that by 2009 half of our
21 landfills are going to be closing and they'll in the
22 post-closure maintenance phase? I mean that doesn't
23 concern you that we can wait and put this decision off?

24 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

25 CHIEF ORR: This is Bill Orr.

1 Clearly this is one of the points that's here for
2 discussion by the Committee today.

3 I think the main thing is, from a staff
4 perspective, we're proposing several other things that --
5 for example, the possibility of a pooled fund, the
6 possibility of some kind of insurance product, the
7 possibility of corrective action monies being set aside.
8 And we really felt like it would be important to present
9 the whole range of options to the Board so that in a sense
10 you were making -- you were able to make an informed
11 decision because you'd see all the options on the table at
12 the same time. So that was really the driving force.

13 I mean there was lots of sub-discussion with --
14 is 20 percent the right number? Should it include capital
15 costs or other costs? A lot of those sub-discussions.
16 But the main reason that we are recommending that it be
17 deferred is because we feel like we want to have all of
18 those choices before the Board at the same time.

19 COMMITTEE MEMBER PEACE: Okay. Go ahead.

20 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

21 VLACH: All right. The next set of comments had
22 to do with issues relating to insurance. And in some
23 cases -- in most cases these issues related to insurance
24 were changes that the Board -- or that the staff had made
25 in the package subsequent to the authorized March version.

1 So staff felt that at this time we would -- we're
2 recommending that we take those comments out -- that was
3 according to -- pursuant to Mr. Rauh's letter -- we take
4 those changes -- those proposed changes out of this
5 current package and also postpone any additional changes
6 that might be appropriate for insurance to Phase 2 of the
7 regulations as well.

8 But, again, we're recommending Phase 2 for this,
9 but for a slightly different reason. Mostly because they
10 were not part of the original authorized regulations
11 package.

12 Are there any questions about that insurance?

13 CHAIRPERSON MULÉ: No, that's fine with me.

14 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

15 VLACH: Then there were a set of questions
16 relating to staff's recommendation regarding the frequency
17 of updating cost estimates included in the closure plans.
18 And this was a bit of a complex issue. There are really
19 three parts to it. In an attempt to clarify existing
20 regulations, staff included a section in -- beginning in
21 21780, I believe, that tried to make it more clear that
22 closure plans needed to be revised at the time of a
23 five-year permit review and that they needed to be -- the
24 cost estimates needed to be reevaluated during that time;
25 and that the operators needed to be using real unit cost

1 estimates rather than simply using some kind of an
2 inflation factor or some kind of an index, that they
3 should really be used things like experience from previous
4 projects or bids and things like that rather than just
5 taking their old number and looking at the consumer cost
6 index and inflating it.

7 So that was the intent of this section. And
8 there were a number of comments about that. Some of the
9 comments had to do with whether or not operators should be
10 required to update on frequency of the permit review. And
11 staff's response to that is that this is really part of
12 the existing regulation system that's been in effect since
13 1990. So it's not -- even though we got comments like
14 this, they were comments that -- our response would be,
15 "Well, this is really existing regulations and we're
16 trying to clarify. We're not introducing a new
17 requirement to review every five years. It's we're trying
18 to clarify that comment." So --

19 COMMITTEE MEMBER PEACE: So we're looking at all
20 those cost estimates and stuff at least every five years?

21 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

22 VLACH: At least every five years.

23 CHAIRPERSON MULÉ: Bernie, this is Rosalie Mulé.
24 So if it's part of the existing regulation, what exactly
25 are we clarifying?

1 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

2 VLACH: Well, we're trying to clarify the way in
3 which the operator went about revising the cost estimate.
4 As I was saying earlier, that there was some -- in staff's
5 experience -- and, after all, the purpose of this package
6 was to try to get better cost estimates --

7 CHAIRPERSON MULÉ: Correct.

8 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

9 VLACH: -- because that provides -- that's the
10 basis of better financial assurance. So our experience
11 had been that operators were not using real-life
12 experiences or other kinds of real information for their
13 cost estimates but were relying to some degree on this --
14 during this review process, review phase. And, don't
15 forget, these are preliminary plans, so there might be,
16 you know, several years left of capacity. And so when
17 they would come in for a preliminary plan review, they
18 would simply update the cost estimates using an index of
19 some kind, rather than looking at the unit costs.

20 So we changed the language to -- it used to say
21 they need to revise their current costs. And we included
22 language that said -- now it says something to the effect
23 they need to revise the actual current unit costs. And
24 that's the language that's caused some concern. There
25 was -- we included a sentence in that section 21780 that

1 says, "Cost estimates shall be reevaluated at the time of
2 each plan amendment, update, or revision." Staff is
3 recommending that we take that sentence out completely.
4 There was a lot of concern about the word "reevaluate".

5 CHAIRPERSON MULÉ: Correct, reevaluate versus
6 update.

7 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

8 VLACH: Right.

9 CHAIRPERSON MULÉ: My next question then to
10 follow up on that would be then, what percentage of
11 operators were using just a regular inflation factor index
12 as opposed to actual cost increases?

13 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

14 VLACH: I'm sorry, I can't answer that. I can't
15 give you a percent. I just know that it was an issue that
16 staff identified through their experience in reviewing
17 preliminary plans. And it was an issue that was
18 significant enough that we felt it deserves some
19 attention --

20 CHAIRPERSON MULÉ: Okay. Well, staff, if you all
21 could get back to us with the -- you know, in your
22 reviews, the number of reviews and then the number of
23 operators that were using the inflation index as opposed
24 to actual costs, I think that would help us better
25 identify, you know, the significance of the issue. It

1 would clarify it for us, you know, if it's 10 percent, 20
2 percent, 80 percent, whatever. Okay?

3 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

4 VLACH: Yes.

5 CHAIRPERSON MULÉ: Thank you.

6 COMMITTEE MEMBER DANZINGER: And, Bernie, so
7 you're saying that the current statute refers to actual
8 costs?

9 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

10 VLACH: No, it does not.

11 COMMITTEE MEMBER DANZINGER: It doesn't?

12 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

13 VLACH: No.

14 COMMITTEE MEMBER DANZINGER: Because what I'm
15 trying to get clear in my mind, are we really just
16 clarifying existing statute because some people haven't
17 been doing it precisely according to statute, or are we
18 making a change? So the characterization "actual cost,"
19 isn't that a change as opposed to just a reaffirmation of
20 existing statute?

21 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

22 VLACH: Actually --

23 COMMITTEE MEMBER DANZINGER: You see what I mean?
24 We're characterizing the whole thing as we're just
25 clarifying statute.

1 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

2 VLACH: Yeah.

3 COMMITTEE MEMBER DANZINGER: But if there is a
4 material difference between actual and whatever the
5 statute said, then it's really just -- you know, not a
6 clarification. So I just wanted to get that straight in
7 my mind.

8 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

9 VLACH: Well, yeah. Mr. Danzinger, part of the
10 issue is that because the current language, the language
11 the staff's proposing here, the new language that was
12 included in the March version uses the terms "actual
13 current unit costs" -- we've added actually just two words
14 to that existing sentence. The word "actual" and the word
15 "unit". It used to read, "based on current costs for
16 closure and post-closure maintainence." And staff has
17 really just -- although it looks on the -- when you look
18 at the attachment, that whole section is underlined there,
19 it looks like we're adding a whole new sentence. We're
20 really not. We're just adding those two words.

21 So I think there has been -- and I want you to
22 understand, there has been some concern about the word
23 "actual," because there was some -- it's not clear whether
24 that term is referring to actual current or actual unit.

25 COMMITTEE MEMBER DANZINGER: Okay. What is our

1 intent? What does it mean?

2 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

3 VLACH: Our intent was that it would be "actual
4 current unit costs." So it would really be modifying the
5 word "current" rather than the word "unit". But we
6 understand that we had, you know, comments that that --
7 where some people had the same misunderstanding as perhaps
8 you or others may have had. So we recognize that and we
9 wanted to bring that to your attention this morning, that
10 the word "actual" seems to be problematic. And staff has
11 looked at the this and -- our understanding at this point
12 is that if the word "actual" was not included, it really
13 would not change the -- we would still get the value that
14 we wanted, because the very next phrase there says that
15 cost estimate adjustments based on inflation factors are
16 not acceptable. So that really gets to the heart of the
17 matter. And so it isn't necessary --

18 COMMITTEE MEMBER DANZINGER: Okay. So the
19 concern would be that "actual" might introduce a new set
20 of concerns or a new set of problems, unintended
21 presumably?

22 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

23 VLACH: Right. Well, we've had comments to the
24 effect that "How can you use actual costs when this is a
25 preliminary plan and "actual" really refers to as-built

1 costs? And how can you have an as-built cost when the
2 facility hasn't reached it's closure yet?"

3 So those are the kind of misunderstandings that
4 have come about by using that word "actual". And we
5 recognize that and we're -- with the Committee's pleasure,
6 that's one of those changes that would be possible to be
7 made at this time.

8 COMMITTEE MEMBER DANZINGER: Well, that's enough
9 for it now. I'll be interested in hearing whether any
10 stakeholders have any ideas or thoughts on how that could
11 be addressed.

12 So thanks.

13 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

14 VLACH: So just to summarize, that one section,
15 21780(a)(2), we have already recommended a change from the
16 March version. I'd just strike the sentence that says,
17 "Cost estimates shall be reevaluated at the time of each
18 plan amendment, update, or revision," because that's
19 already understood elsewhere in the regulations.

20 And we are bringing to your attention the word
21 "actual," which is included here. And it's also included
22 in Section 21865(b)(4). It's the same kind of language.
23 So if the Committee wishes to do something with that word,
24 it probably should be -- to be consistent, probably should
25 deal with it in both places.

1 COMMITTEE MEMBER PEACE: You think if we just
2 delete the word "actual" cost estimates shall be based on
3 current unit costs for closure, that would be adequate?

4 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

5 VLACH: Staff's feeling is that that actually
6 reads better and is easier to understand and it is more
7 clear, which is what our intention was to begin with.

8 COMMITTEE MEMBER DANZINGER: But then you're
9 saying if there are concerns about the inclusion of the
10 word "actual," we don't lose anything in terms of what our
11 intentions are and what we're seeking through -- you know,
12 the purpose behind the whole regs. Okay.

13 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

14 VLACH: Right. That's our feeling at this time.

15 COMMITTEE MEMBER PEACE: I can understand that.
16 And I can go along with striking the word "actual" --

17 CHAIRPERSON MULÉ: And I agree.

18 COMMITTEE MEMBER DANZINGER: I agree.

19 COMMITTEE MEMBER PEACE: -- in both of those
20 sections.

21 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

22 VLACH: All right. Next I would like to mention
23 an issue that's not actually identified by any language in
24 the regulations, but has been brought to our attention by
25 one commenter more than once; and, that is, that the AB

1 2296 includes a statement to the effect that the Board
2 should be requiring cost estimates based on -- well,
3 should be requiring reasonably foreseeable cost estimates.
4 And that term "reasonably foreseeable" never made it into
5 our regulations. We have -- and we had a reason for that.
6 But the commenter was making the case that, "Well, statute
7 is talking about reasonably foreseeable, so there must
8 have been a reason" -- "there must have been a good reason
9 that the author included that. Why haven't you used that
10 term throughout when you're talking about cost estimates?
11 Why don't you talk about reasonably foreseeable cost
12 estimates? They're not included anywhere in this part of
13 the regulations, in this package."

14 And the staff's response to that is that it's --
15 we acknowledge that reasonably foreseeable is included in
16 the statute, their language. But the two reasons we feel
17 we wouldn't want to include it at this time -- one is that
18 by virtue of the process that we're in now with AB 2296,
19 the short time period that we have, where we really have
20 only opportunity for one 45-day comment period and one
21 15-day period, that term is somewhat of a loaded term. It
22 would be a term that would have to be defined and there
23 would have to be some vetting of it and analysis of it.
24 And it would probably take more than one 15-day comment
25 period to resolve that issue.

1 COMMITTEE MEMBER DANZINGER: Is it clear what the
2 term is intended to mean in the statute, since it exists
3 currently in the statute?

4 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

5 VLACH: Well, Mr. Danzinger, the history of AB
6 2296 was such that that term was inserted in the very last
7 version of the bill without a lot of analysis on our part.
8 And we really are not clear how it got into the bill or --
9 and so we're not -- we don't really understand very much
10 the author's intent there.

11 COMMITTEE MEMBER DANZINGER: Okay. I guess I --

12 COMMITTEE MEMBER PEACE: Should we try to define
13 at some point to match up with the bill?

14 COMMITTEE MEMBER DANZINGER: Yeah, that
15 would be -- I mean, you know, I tend to think less about
16 when something got included in the bill. It's either in
17 the bill or it's not in the bill. And I don't think we
18 want to dissect what went on or what happened or what kind
19 of --

20 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

21 VLACH: Well, I just was trying to answer your
22 question --

23 COMMITTEE MEMBER DANZINGER: No, I understand, I
24 understand.

25 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

1 VLACH: You asked me if we knew why. And I said
2 we didn't because it was done at the last moment and we
3 didn't really do an analysis on our part.

4 COMMITTEE MEMBER DANZINGER: Right. I agree with
5 Cheryl though that it probably merits further, you know,
6 exploration on what the intent was. Because if there is
7 some intent there -- or at the very least if we can
8 eradicate any potential pitfalls from inclusion of the
9 phrase to be in concert with the statute -- or the law,
10 then that's probably more prudent.

11 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

12 VLACH: Okay. I --

13 COMMITTEE MEMBER PEACE: If they didn't define it
14 in 2296, it probably kind of leaves it open for us to
15 define what reasonably foreseeable is.

16 COMMITTEE MEMBER DANZINGER: Yeah, that could be
17 too.

18 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

19 VLACH: Well, as I was stating earlier when I
20 raised this issue, that there were two reasons why we felt
21 we didn't want to include it in this package now. One was
22 because of the process. And the other was that the term
23 "reasonably foreseeable" is used in Title 27, but it isn't
24 related to this particular package; it's used in the
25 context of corrective actions. "Reasonably

1 foreseeable" -- "known and reasonably foreseeable
2 corrective actions" is a term that's used in reg -- it's
3 regulatory language. It's primarily used by the regional
4 water quality control boards for water-quality-related
5 issues.

6 COMMITTEE MEMBER DANZINGER: Right.

7 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

8 VLACH: And our sense was that was another --
9 it's kind of -- since it's used in that context, there
10 could be some confusion about using it in another context
11 without thoroughly vetting the definition. And also
12 because we are going to be dealing with corrective action
13 issues in Phase 2, that issue will come up again. The
14 term will raise itself again and we'll have an opportunity
15 to more understand what the author's intent was and to
16 define the term and make sure it's being used consistently
17 in Title 27.

18 COMMITTEE MEMBER PEACE: But you are going to try
19 to define that in the next --

20 CHAIRPERSON MULÉ: -- in Phase 2.

21 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

22 VLACH: In Phase 2.

23 CHAIRPERSON MULÉ: Yeah. And that's going to be
24 the -- point in the exact item and, Cheryl, exactly what
25 you were suggesting, I think. And so I think the

1 Committee's in agreement with staff that this should be
2 addressed in the Stage 2 rule-making package.

3 Is that correct, Bernie?

4 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

5 VLACH: Yes, that's what we're recommending, that
6 this be included in Phase 2.

7 COMMITTEE MEMBER PEACE: But I don't think we can
8 ignore it. It needs to be addressed.

9 CHAIRPERSON MULÉ: Yeah, absolutely.

10 COMMITTEE MEMBER PEACE: Okay.

11 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

12 VLACH: All right. Then we had -- I'll go on to
13 the next issue now, which is the -- we had a comment about
14 our current mechanism of the financial means test. And
15 the commenter felt that we should not be -- that it was a
16 burden to raise the amount of the test from \$10 million to
17 \$15 million.

18 And staff disagrees with the commenter, because
19 that -- we feel that there's sufficient justification
20 based on inflation alone between 1982 and the present.
21 The \$10 million was a number identified in RCRA subtitle D
22 as far back as 1982. And we could reasonably raise the
23 number to \$20 million just due to inflation alone.
24 Probably it could easily be justified higher than that.
25 So we didn't feel we needed to spend a lot of time on this

1 issue. But we just wanted to bring it to your attention
2 and say that we disagreed with the commenter on this one.

3 CHAIRPERSON MULÉ: And, Bernie, what section was
4 that? I'm sorry.

5 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

6 VLACH: Boy. I don't have it handy here on my
7 notes.

8 CHAIRPERSON MULÉ: That's okay. I'll look for
9 it. But basically you're recommending --

10 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

11 VLACH: It's in one of the exhibits.

12 CHAIRPERSON MULÉ: -- to raise the financial
13 means test from 10 to 15 million?

14 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

15 VLACH: Yes. That's the recommendation
16 that -- or that's a proposal that's included in the March
17 version.

18 CHAIRPERSON MULÉ: Right. Yeah, that sounds
19 reasonable. I don't know how my fellow Committee members
20 feel.

21 COMMITTEE MEMBER PEACE: Well, if you said it
22 could go to 20 million just on inflation alone, why did
23 you decide on 15?

24 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

25 VLACH: Well, that's a good question.

1 COMMITTEE MEMBER DANZINGER: It's the last page.

2 It's I think Alternative 2 --

3 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

4 VLACH: -- 22246. And the number's found
5 throughout there.

6 That's a good question, why do we settle for 15
7 when we should -- maybe we could have gone to 20?

8 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

9 CHIEF ORR: Well, I think that that basically was
10 a reflection of the informal process that had gone on for
11 several years, you know. So I think we were comfortable
12 with that number and don't feel we want to up it at this
13 point. But at the same time we don't want to lower it
14 either. So I think it's a reflection of our vetting
15 through the informal process and the direction that was
16 originally received from the Committee.

17 COMMITTEE MEMBER DANZINGER: Yeah. I mean that
18 was the Committee's action in March, right?

19 CHAIRPERSON MULÉ: Right.

20 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

21 VLACH: Yeah.

22 COMMITTEE MEMBER DANZINGER: Okay, okay. Well,
23 I'm fine with 15 myself.

24 CHAIRPERSON MULÉ: So am I.

25 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

1 VLACH: Yeah, and -- well, staff just reminded me
2 that instead of calculating from 1992, they were
3 calculating from 1993, which was the date when our
4 financial assurances -- when RCRA financial assurances
5 were authorized. And the 1982 number goes all the way
6 back to subtitle C. Subtitle D financial assurances was
7 from 1993, although they use the same number. So if we
8 start from '93 to the present, it's 15 million.

9 COMMITTEE MEMBER DANZINGER: So we'll go up to 20
10 when it's sub E.

11 (Laughter.)

12 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

13 VLACH: And then, okay, if we can dispatch that
14 one then, the last issue, we received -- pardon me. We
15 received more than one comment from local government to
16 representatives requesting that we allow cost estimates
17 from local governments to be based on -- that were based
18 on the use of prevailing wages as a cost estimate that we
19 would allow without any additional justification.

20 And now that -- the way the section --

21 COMMITTEE MEMBER PEACE: Doesn't it say somewhere
22 that prevailing wage doesn't always apply to all costs?

23 CHAIRPERSON MULÉ: Yes, Cheryl, it was in one of
24 those letters.

25 COMMITTEE MEMBER PEACE: Right.

1 CHAIRPERSON MULÉ: I believe it was in the letter
2 from CSAC here.

3 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

4 VLACH: Yes. Also from Yolo County. They
5 both --

6 CHAIRPERSON MULÉ: Oh, I didn't get that letter.

7 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

8 VLACH: Yeah, they made very similar points on
9 this one. And the section I'm referring to is section
10 21815 subpart B. And this has to do with how cost
11 estimates shall be based. And the issue is whether or not
12 cost estimates -- currently the regulations require that
13 CalTrans' rates be used for cost estimating, because
14 that's what we currently use, that's what the state uses.
15 And the regulations already say that the estimates are to
16 be based on third party rates, which are the rates that
17 the state would use.

18 So we're recommending that -- back in March, we
19 included the language that the rates should be based on
20 CalTrans' rates.

21 The local governments feel that if they have a
22 project in which they paid prevailing wages, then they
23 should be able to use that project's cost estimate as the
24 basis for future cost estimates without any further
25 justification.

1 And staff -- while we can understand that and
2 while we would not necessarily disagree with the cost
3 estimate based on prevailing wages, we feel that a
4 justification is still necessary, for the primary reason
5 that cost estimates based on prevailing wages may not
6 necessarily include CalTrans' rates and they may include
7 other kinds of costs that are not necessarily part of
8 prevailing wages. So the cost estimate is more than just
9 the wage. It includes things like materials cost and
10 other kinds of costs.

11 And so the point was that they were asking us to
12 accept a cost estimate simply because they had used
13 prevailing wages. And we're saying that "that may be
14 acceptable if you can justify it. But without a
15 justification, we feel that you need to account" -- "that
16 we could not accept it without a justification because we
17 need to account for those things that go beyond the wage
18 part of the cost estimate." And so that was our
19 understanding about this. And certainly the regulations
20 don't prohibit those kinds of cost estimates to be used,
21 because the very next section says, "An operator may
22 propose and we can accept alternative costs." So we're
23 just saying that, "Yes, you can use those cost estimates,
24 but you still need to justify them."

25 Perhaps in the future when we develop more of a

1 history about this, we might be able to go back and look
2 at this. But at the present time, we feel that the cost
3 estimates should be based on CalTrans' rates, and
4 otherwise they should be justified. That's really it in a
5 nutshell.

6 So we disagree with the commenters on this one,
7 and we're not proposing --

8 CHAIRPERSON MULÉ: Well, Bernie, like you said,
9 it's not that we're prohibiting them from using other
10 alternate costs. We're just asking them to provide
11 justification.

12 COMMITTEE MEMBER PEACE: Right.

13 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

14 VLACH: That's right.

15 COMMITTEE MEMBER PEACE: That's reasonable.

16 CHAIRPERSON MULÉ: That's reasonable.

17 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

18 VLACH: And at this point, I have exhausted my
19 list of kinds of comments and the way we would have dealt
20 with those comments.

21 And so I just want to remind you that the
22 attachments you see reflect all the comments, beginning
23 from March until the end of the comment period, with the
24 exception of these two issues that I mentioned, one of
25 them with the word "actual" and the other -- well,

1 actually that's the only issue right now, is the term
2 "actual" -- the word "actual". And we would just ask for
3 the Committee's direction about that. So that seems to be
4 the last issue remaining here.

5 CHAIRPERSON MULÉ: Which I think you did get
6 concurrence from the Committee to delete the word.

7 COMMITTEE MEMBER DANZINGER: Yeah, to delete the
8 word.

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10 CHIEF ORR: So at this point if there are any
11 other questions --

12 COMMITTEE MEMBER PEACE: There was a comment that
13 I believe L.A. County made about adding in something to
14 read regarding site revegetation and landscaping.

15 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

16 VLACH: Yes, we saw that comment, and --

17 COMMITTEE MEMBER PEACE: Is that addressed
18 somewhere else adequately enough or --

19 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

20 VLACH: Well, that was another one where we
21 disagreed with the county's comment. Because if you read
22 their explanation, they are using aesthetics as a basis
23 for including this in our regulations. And our
24 regulations don't -- can't include things such as
25 aesthetics. They're functional --

1 COMMITTEE MEMBER PEACE: Isn't it -- control

2 basically? I mean --

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4 CHIEF ORR: Yeah, they're minimum standards for

5 how you need to close. And we do address --

6 COMMITTEE MEMBER PEACE: Those are adequately

7 addressed --

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9 CHIEF ORR: Yeah.

10 COMMITTEE MEMBER PEACE: -- in the regulations?

11 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

12 VLACH: Right. The Water Board's requirement for

13 final closure includes a layer that -- it could include a

14 vegetative layer. And so in some respects this issue is

15 already included and required by the regulations.

16 COMMITTEE MEMBER PEACE: You know, it's too bad

17 we can't go there, because there's two closed landfills

18 right around me that are embarrassing to me. They just

19 keep way over -- they're -- it's like, sure, it would be

20 nice if there's some vegetation on that.

21 But I guess who would require that if the county,

22 when they --

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24 CHIEF ORR: Seems like a local government kind of

25 issue to me.

1 COMMITTEE MEMBER DANZINGER: Yeah, I think it
2 would be a local government kind of thing.

3 COMMITTEE MEMBER PEACE: Okay. One more thing
4 that the county mentioned -- and I know it's been a source
5 of contention, where they say cost estimates shall include
6 the cost for all activities yet to be completed, even if
7 the activity is tentatively planned to occur or be
8 completed prior to closure or completion of post-closure.
9 Now, that was an August version, but it's not in the
10 newest version. I mean how -- is that -- where you've
11 added those things in like on page 4, is that how you
12 dealt with that?

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14 CHIEF ORR: That would be one of the items that
15 falls under the heading of things that were changed
16 between the March version. So --

17 COMMITTEE MEMBER DANZINGER: Yeah. Those are
18 unauthorized modifications, Cheryl.

19 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

20 CHIEF ORR: -- we've taken that back out.

21 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

22 VLACH: But that doesn't mean we won't -- we may
23 bring those back during Phase 2 or at some other time,
24 because that may be a reasonable clarification. But it
25 isn't one that the Committee wanted to -- that the

1 Committee authorized in this very short regulatory process
2 that we have before us.

3 COMMITTEE MEMBER PEACE: Because I know that was
4 one of the things that -- we were concerned about that and
5 also that 20 percent contingency. Now we're saying we're
6 not even going to deal with those, we're putting them off.
7 Is that what you're saying?

8 CHAIRPERSON MULÉ: Well, Cheryl, if -- this is
9 Rosalie Mulé -- if you -- being at pretty much all of the
10 meetings and listening to the comments, I think
11 particularly the 20 percent contingency issue was one of
12 those issues that we really need to discuss further. We
13 need to discuss if 20 percent is the appropriate number or
14 if there's another number. And I think staff did a good
15 job earlier of explaining the reasons to put that off
16 until Phase 2, because we really want to include that in
17 the context of the larger picture of -- you know, of how
18 we're going to deal with, you know, all of these financial
19 assurance mechanisms.

20 COMMITTEE MEMBER PEACE: Right. But I say for
21 the 20 percent contingency, at least for post-closure, not
22 for closure but for post-closure, is something we're
23 putting off --

24 CHAIRPERSON MULÉ: Right. But we will be
25 discussing, you know, along with everything else. And so

1 I think staff has -- what staff has -- what I understood
2 staff to say earlier, rather than take this piecemeal,
3 let's deal with it as a whole, so we get to really address
4 this, you know, holistically as opposed to on a
5 piece-by-piece basis. And I support the recommendation.

6 COMMITTEE MEMBER PEACE: Right, yeah. At 20
7 percent, yeah. I'd rather deal with it now, but I can
8 understand putting it off. That's fine.

9 But where they say cost estimate -- and I know
10 because this was brought up in a couple of the workshops I
11 went to, which is cost estimates shall include the cost
12 for all activities yet to be completed.

13 CHAIRPERSON MULÉ: Well, that was not part of the
14 Board-authorized version that went out.

15 COMMITTEE MEMBER PEACE: How are we dealing with
16 that if it's not anywhere in there? I'm just wondering
17 how it keeps --

18 CHAIRPERSON MULÉ: It can be dealt with in the
19 future.

20 COMMITTEE MEMBER DANZINGER: Yeah, I mean that's
21 only been opined thus far. It has no formal basis for
22 inclusion. It's just a -- it's a topic of discussion and
23 back and forth. And obviously it's a sticking point and
24 it's one that's going to get a lot of attention. But
25 it's --

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2 CHIEF ORR: Yeah. And one more thing is that
3 we've had a whole variety of different workshops. And one
4 of the areas that we've discussed that concept a lot
5 further is in the closure cost dialogue workshops that we
6 had. And based on that, I think we have a better
7 understanding of how to deal with those anticipated costs.
8 So within our existing business practices we've already
9 addressed that. And if we need to look at that further in
10 terms of the Phase 2 regulations to make sure that that's
11 more formalized, we can do that. But I feel like we at
12 least for now have an interim solution to that that we've
13 already begun to see the benefit of.

14 COMMITTEE MEMBER PEACE: Well, I was wondering if
15 you had addressed that kind of in another way in these
16 regulations. Because I guess what concerns me is if
17 somebody says, "Oh we're going to do that prior to
18 closure," but then they don't, I mean who is it that
19 monitors that and makes sure that they do what they plan
20 to do?

21 STAFF COUNSEL LEVINE: If I may just -- Steve
22 Levine, Staff Counsel.

23 COMMITTEE MEMBER PEACE: Yeah. Hi, Steve.

24 STAFF COUNSEL LEVINE: Hi. Thank you.

25 Yeah, as Bill was just indicating, this was an

1 issue on the closer cost dialogue workshops. And present
2 at a number of those workshops were representatives of the
3 U.S. Environmental Protection Agency. And they were very
4 helpful in clarifying and attempting to harmonize the
5 issue that you're addressing now with current subtitle D
6 requirements. So we are addressing this in the contents
7 and with the cooperation and participation of U.S. EPA.

8 COMMITTEE MEMBER PEACE: Okay. Yeah, because I
9 just want to make sure that -- how somebody says they're
10 going to do it, then they don't do it, I mean who is it
11 that's responsible for monitoring to make sure they do
12 what they say they're going the do?

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14 CHIEF ORR: That would be the LEA, the Water
15 Board and us.

16 COMMITTEE MEMBER DANZINGER: Yeah in some cases,
17 yeah, three of us.

18 COMMITTEE MEMBER PEACE: Okay.

19 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

20 VLACH: We periodically review the closure cost
21 estimates, and that's the point in time when this issue
22 comes to our attention.

23 COMMITTEE MEMBER PEACE: If they say they're
24 going to do this three years before final closure, I mean
25 we will be there, the Water Board -- somebody will be

1 there to make sure that it's monitored and make sure it's
2 done. And if it's not done, to have them increase their
3 closure costs or closure cost estimate. Or there's some
4 mechanism for that in what we have already?

5 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

6 VLACH: Yes, there is.

7 COMMITTEE MEMBER DANZINGER: Yeah, there is. And
8 I mean I've always felt that was reflected in the
9 Committee's action in March as to why it wasn't in there,
10 because there's an acknowledgement of the existing process
11 that -- regulatory oversight that, you know, certain folks
12 are responsible for certain things. And, you know, that
13 if there's going to be any refinement or getting smarter
14 on that element, you know, vis-a-vis 2296, then that would
15 come up in due course.

16 But for this, it seems appropriate the way that
17 staff has addressed it, at least to me it does.

18 CHAIRPERSON MULÉ: Well, it does to me too.

19 And thank you, Steve, for the clarification with
20 the fact that, you know, U.S. EPA was involved in that
21 closure cost dialogue. And really we knew it was just a
22 matter of clarifying those issues, which I think staff did
23 a good job through those dialogues -- those dialogue
24 meetings of doing so.

25 COMMITTEE MEMBER PEACE: Okay.

1 COMMITTEE MEMBER DANZINGER: That concludes
2 yours, Bernie?

3 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER
4 VLACH: Yes, it does.

5 COMMITTEE MEMBER DANZINGER: Okay. Bill, did you
6 have anything to wrap up with on the staff presentation?

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8 CHIEF ORR: Not at this point. I just think
9 we're ready for any testimony.

10 COMMITTEE MEMBER DANZINGER: Yeah, I'm going to
11 ask the Committee members, do we want to go ahead and do
12 public comment now or --

13 CHAIRPERSON MULÉ: Yes.

14 COMMITTEE MEMBER DANZINGER: Okay. Let's do
15 that.

16 I've only got one speaker slip thus far, Chuck
17 Helget representing Allied Waste.

18 All right. I'll bet you we'll have more speaker
19 slips before Chuck's done talking.

20 MR. HELGET: Madam Chair, members of the
21 Committee. Chuck Helget representing Allied Waste. In
22 the absence of Chuck White, I thought I would make sure
23 that at least somebody commented --

24 (Laughter.)

25 MR. HELGET: -- on this.

1 COMMITTEE MEMBER DANZINGER: I bet you'll be a
2 little briefer.

3 (Laughter.)

4 MR. HELGET: I will try.

5 My main point is still seeking a little bit of
6 clarification on the question of actual current unit costs
7 and the reasonableness factor that was written in AB 2296.
8 And I'll try to approach this in an organized way.

9 The way the regulations read now, as I understand
10 it, the provisions in 21780 and then a later section, it
11 will read, "Cost estimates shall be based on" -- and then
12 the term "actual" is coming out presumably. But it's
13 still going to read, "Cost estimates shall be based on
14 current unit costs for closure and post-closure
15 maintenance."

16 I do not understand what "current unit" means.
17 And I would like to ask staff to try to explain that.
18 I've got a couple of thoughts in my mind. But if we can't
19 take a term like "reasonable" and assume what reasonable
20 means, how can we put a term like "current unit" in there
21 without further defining it? It's a new term to me.

22 If we're saying that by using the term "current
23 unit" we mean the current part of the facility that we're
24 developing, the current cell, then maybe that makes some
25 sense. Although, again, I would want to know why we're

1 taking something that is purely a cost estimate and basing
2 it on actual costs and current terms. I still don't get
3 the benefit of doing that or what staff is trying to get
4 at.

5 The second part of my question really goes back
6 to AB 2296. And if the Committee would bear with me, I
7 would like to read, if I could find it here, the section
8 of 2296 that includes the reference to reasonably
9 foreseeable.

10 In 2296, it says, "The Board shall adopt
11 regulations on or before January 1, 2008, that require
12 closure and post-closure maintenance cost estimates to be
13 based on reasonably foreseeable costs the state may incur
14 if the state would have to assume responsibility for
15 closure and post-closure maintenance due to the failure of
16 the owner and operator."

17 As far as my experience goes -- and I would -- I
18 mean Bill and I have -- Mr. Orr and I have talked about
19 this repeatedly. And I do appreciate staff's efforts to
20 try to get to the bottom of this. But I guess it's beyond
21 me how we would worry about including a term like
22 "reasonable" and having to define it when I would suggest
23 to Elliot that "reasonableness" is a term that's fairly
24 commonly used in the law and has been fairly commonly
25 defined throughout time. "Reasonableness" is not a word

1 to me that needs definition. "Current unit" would be a
2 term that would need further definition to me, because
3 that could mean almost anything. But "reasonableness" is
4 fairly commonly understood.

5 So my suggestion here is that -- I don't have a
6 problem with the direction that the Committee is going
7 necessarily. But I think leaving the term "current unit,"
8 whether you've got "actual" in there or not, is still very
9 vague to me. And I don't -- I would ask staff to define
10 that further.

11 The second point again on the reasonableness. I
12 don't think AB 2296 is vague at all. I think it states
13 very, very clearly what the Legislature intended the Board
14 to do. And that was that these costs should be based on
15 reasonably foreseeable." Whether that makes sense or not
16 to staff, I would suggest to you that the Legislature was
17 not vague in how they included this in 2296. Having been
18 part of those negotiations with a number of other people,
19 those terms were included for a very specific reason. It
20 wasn't accidental. It wasn't without meaning. And the
21 Legislature I think passed the bill, signed the bill. As
22 far as I understand the way the process works, the Board
23 has the responsibility of implementing regs that are
24 consistent with the statutes that demand those regulations
25 in the first place.

1 So any questions, I'd be happy to answer them.

2 COMMITTEE MEMBER DANZINGER: I mean I may be
3 wrong. It seems what you're saying, Chuck, reinforces
4 what we were talking about later, that we've got to get to
5 the bottom of what "reasonably foreseeable" means,
6 correct? I mean what the author's intent and how we need
7 to define that. Which, again, would happen in Phase 2.
8 But I understand your concern is that we're talking about
9 Phase 1 and the exclusion of that terminology, you're
10 saying, is inconsistent with both intent and, you know,
11 expressed -- what's expressed in the law.

12 MR. HELGET: Yes, sir. I mean I'm concerned
13 that, one, that the statute again -- I don't think
14 reasonably foreseeable needs further definition. Like I
15 said, that would be my first point.

16 My second point is that cost estimates shall be
17 based on current unit costs seems to fly in the face of
18 reasonable and foreseeable to me. It's inconsistent with
19 what the statute's asking you to do. Now, taking "actual"
20 out helps to some degree, but you still have this term
21 "current unit," and I don't know what that means. But
22 it's --

23 COMMITTEE MEMBER DANZINGER: I don't know what
24 that means either. But I don't know what reasonably
25 foreseeable means either. So in the absence of a

1 definition or some legal, you know, connotation that maybe
2 Elliot can clarify, I'd at least want to know what was the
3 author's intent. I mean what's the intent of the
4 terminology, "reasonably foreseeable"? It's probably
5 fine, but I don't know what that is.

6 Can somebody clarify that for me? I mean --

7 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

8 CHIEF ORR: Well, I guess --

9 COMMITTEE MEMBER DANZINGER: I don't read law.

10 So I don't open up books and read stuff every day that
11 uses the term "reasonably foreseeable," so I don't know
12 what it's ramifications are in this particular section.

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14 CHIEF ORR: Yeah, I guess I -- I would just back
15 up a little bit. And in a sense what I would say is that
16 the whole description of what is included in a closure
17 plan, a closure cost estimate, that is our interpretation
18 of what reasonably foreseeable costs would be under the
19 definition of the statute. I think that -- you know, it
20 doesn't say that you need to include all of the individual
21 sub-items that are there; that in a sense, the whole
22 regulation -- that whole section, 21780, elaborates on
23 what the interpretation of what "reasonably foreseeable"
24 would include. So I don't think we've done anything
25 inconsistent.

1 But I guess -- going back to what Bernie said at
2 the outset. I think the thing that we've tried to avoid
3 introducing in Phase 1 are contingent costs, which we've
4 just spent a lot of time focusing on what should or
5 shouldn't be included in cost estimates through the
6 closure cost dialogue and that we reserve further
7 discussion for Phase 2. I think there's a difference
8 between "reasonable," which I think we all agree that
9 reasonable -- that a reasonable engineer that's proposing
10 these cost estimates through the closure plan is expected.
11 I think reasonable regulators are expected. I'm not sure
12 that I understand what adding the term "reasonable" adds
13 to the regulation.

14 So that brings us back to what does the statute
15 say? It says reasonably foreseeable. And that is a term
16 of art that, like Bernie indicated, connotes something
17 that might be contingent, not something that's certain.
18 It might be a landfill gas control system that's not
19 currently required.

20 COMMITTEE MEMBER DANZINGER: But from looking
21 ahead -- looking before the Phase 2 stage, you're saying,
22 Bill, that the terminology in here, "actual current unit
23 costs," is staff's interpretation of what the statute says
24 as reasonably foreseeable?

25 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

1 CHIEF ORR: I think the whole description of this
2 section and what it calls for is the staff's
3 interpretation of what that would be.

4 COMMITTEE MEMBER DANZINGER: -- of what
5 reasonably foreseeable is.

6 Okay. Well that -- yeah, I mean, Chuck, I don't
7 know what you or any stakeholders have to say about that.
8 But I mean I can't draw that connection, because I don't
9 know what the consequences are at the impacted end of this
10 and how it affects, you know, the core objectives of 2296,
11 which is get better -- you know, get the better cost
12 estimates to, you know, fortify the DFA. But "reasonably
13 foreseeable," I mean I'm just -- I don't know.

14 Do either of -- Rosalie, Cheryl, do either of you
15 have a clearer sense of this than I? Because I don't.

16 CHAIRPERSON MULÉ: No, I think I tend to agree
17 with staff on this one and your comments, Jeff. I think
18 that we need to better define "reasonably foreseeable".
19 And, Elliot, I'm depending on you and staff to help us
20 with that. I do think that we as a board need some
21 clarification on that.

22 COMMITTEE MEMBER DANZINGER: I don't have a
23 problem with "reasonable". If "reasonable" meant weak, I
24 would have a problem with it. But "reasonable" is -- I do
25 agree is universally regarded as something that connotes

1 balance, that achieves the objectives that you're seeking
2 in a particular law or whatever. But it also doesn't, you
3 know, impose certain burdens that are inequitable.

4 Okay. Well, then I guess we can proceed on
5 moving ahead and --

6 COMMITTEE MEMBER PEACE: I think we still need to
7 look at that in the next section and define it somehow.

8 COMMITTEE MEMBER DANZINGER: Chuck.

9 MR. HELGET: My point though is that we're
10 leaving -- I still haven't heard from anybody what
11 "current unit" means. No one has told me what we're
12 trying to achieve --

13 COMMITTEE MEMBER PEACE: Is there a way we can
14 clarify that in the next 15 days?

15 COMMITTEE MEMBER DANZINGER: Well, we should be
16 ready with a clarification of that right now since staff
17 has presumably already taken "reasonably foreseeable" and
18 applied this intent to it.

19 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

20 CHIEF ORR: Yeah, I think can I address that
21 point. Maybe we need to insert a comma, because it's
22 intended to be current unit-costs, not current-unit costs.
23 So it doesn't mean a landfilling -- it doesn't mean a
24 landfilled unit, i.e., a phase of a landfill, a part of a
25 landfill. What it means is unit costs, which are X times

1 X. That's a unit cost. It's basically how much does a
2 yard of dirt cost to place in front of a cover. So that's
3 what a unit cost is. And we want current unit-costs as
4 opposed to inflationary factors that have been multiplied
5 from some point in the past. So it's current comma unit
6 costs.

7 COMMITTEE MEMBER DANZINGER: "Current" meaning
8 realtime, updated, whatever --

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10 CHIEF ORR: Yes.

11 MR. HELGET: I appreciate that clarification.
12 That makes significantly more sense to me. The only --
13 the last thing --

14 COMMITTEE MEMBER DANZINGER: The power of the
15 comma.

16 MR. HELGET: Yeah. Or the difference between
17 "shall" and "may".

18 COMMITTEE MEMBER DANZINGER: "Shall" and "May".
19 Well, that's much more than the comma.

20 MR. HELGET: The last point I would make is that
21 reasonably foreseeable is a term that's used -- it has
22 been used for many, many, many years in corrective actions
23 estimations. I don't think anybody's had a serious
24 problem in defining that. So I think an effort to try to
25 define in regulations what reasonableness is makes little

1 sense to me. But I'll concede --

2 COMMITTEE MEMBER DANZINGER: I think we look
3 forward to your expertise, Chuck, as we figure that out.
4 But I agree that there needs to be a healthy deference to
5 that term and grasping what exactly it means and how it's
6 going to apply in the Phase 2.

7 CHIEF COUNSEL BLOCK: Well --

8 COMMITTEE MEMBER PEACE: When we start to go
9 through to try to figure out a definition, wouldn't it be
10 like "reasonably foreseeable" would include but not
11 limited to blah, blah, blah, just to give like some
12 examples?

13 CHIEF COUNSEL BLOCK: Potentially -- this is
14 Elliot. And I don't have a mike near me, so I don't know
15 if you can hear me. I'm just going to speaker louder.

16 COMMITTEE MEMBER DANZINGER: Can you hear Elliot?

17 COMMITTEE MEMBER PEACE: I can hear.

18 CHAIRPERSON MULÉ: Yes.

19 CHIEF COUNSEL BLOCK: Okay. Good.

20 And, yes, Cheryl, I think that's one of the
21 things that we could look at doing. But also just as a
22 follow-up as well, I think the issue based on staff's
23 explanation is less about the term "reasonable" and more
24 about the term "foreseeable," which then it gets into
25 issues about estimates and what's an appropriate estimate.

1 And so they were trying to stay away from that in Phase 1
2 because that's really the bigger discussion for Phase 2.

3 COMMITTEE MEMBER DANZINGER: Okay. I don't have
4 any more speaker slips.

5 So any comment or questions from the Committee?

6 CHAIRPERSON MULÉ: No, I think that -- well, not
7 from me. I think that -- staff, correct me if I'm
8 wrong -- I think that while Bernie was making his
9 presentation, we provided direction on each of those six
10 items.

11 So I'm just ready to move forward with putting
12 the revised attachment, I guess it's Attachment 3, out for
13 a 15-day comment period.

14 COMMITTEE MEMBER DANZINGER: Actually it's
15 Attachment 2. Correct, Bill?

16 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

17 CHIEF ORR: Correct.

18 CHAIRPERSON MULÉ: Or Attachment 2, right.

19 COMMITTEE MEMBER DANZINGER: Attachment 2, okay,
20 okay.

21 And this does --

22 PROGRAM DIRECTOR RAUH: If I might --

23 COMMITTEE MEMBER DANZINGER: I'm sorry, Ted. Go
24 ahead.

25 PROGRAM DIRECTOR RAUH: I was just going to make

1 sure that we had concurrence on the insertion of the
2 comma.

3 COMMITTEE MEMBER DANZINGER: Yes, insertion of
4 the comma. So we can --

5 COMMITTEE MEMBER PEACE: Take out the word
6 "actual".

7 COMMITTEE MEMBER DANZINGER: Deletion of
8 "actual".

9 PROGRAM DIRECTOR RAUH: Insertion of the comma.

10 COMMITTEE MEMBER DANZINGER: We affirmed
11 agreement with the \$15 million figure for financial means.

12 CHAIRPERSON MULÉ: Right. And we were going to
13 move the 20 percent contingency as well as the insurance
14 issues to Phase 2.

15 COMMITTEE MEMBER DANZINGER: Right.

16 MR. ACOSTA: Just a clarification.

17 COMMITTEE MEMBER DANZINGER: Oh, I'm sorry.
18 Glenn.

19 MR. ACOSTA: Just a suggestion.

20 COMMITTEE MEMBER DANZINGER: Identify yourself
21 for the record.

22 MR. ACOSTA: Glenn Acosta with L.A. County
23 Sanitation.

24 It might be clearer if you used the phrase
25 "current cost on a unit basis."

1 CHAIRPERSON MULÉ: Staff, do you have any comment
2 on that?

3 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

4 CHIEF ORR: I'm looking at it.

5 MR. ACOSTA: Just a suggestion.

6 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

7 CHIEF ORR: I think it accomplishes the same
8 thing. Whether or not it would generate additional
9 comments or not, I don't really know. But I think it
10 would be another way of saying the same thing.

11 COMMITTEE MEMBER DANZINGER: Probably just --

12 COMMITTEE MEMBER PEACE: Well, "current cost on a
13 unit basis," that does make it sound a little more clear.

14 COMMITTEE MEMBER DANZINGER: Yeah, and less
15 likely to have people who miss the comma in reading it or
16 whatever. I mean --

17 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

18 CHIEF ORR: Yeah, I think just unit cost is a
19 working term of art for engineers and geologists and other
20 people that deal with cost estimators. So I think, you
21 know, we feel pretty comfortable with unit cost as being a
22 working term.

23 COMMITTEE MEMBER DANZINGER: Right. But one just
24 found a different way of saying it that doesn't require
25 the comma, that doesn't have those two words, one after

1 the other, that could create confusion; unless there's an
2 ulterior motive that we haven't figured out yet.

3 (Laughter.)

4 MR. CUPPS: He's an engineer.

5 COMMITTEE MEMBER DANZINGER: Yeah. Well, that's
6 true, that's true. Just pure as the driven snow.

7 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

8 CHIEF ORR: So based on that, do you have any
9 additional direction in terms of which way you want to go
10 on that or --

11 COMMITTEE MEMBER DANZINGER: I'm okay with that
12 last offering.

13 CHAIRPERSON MULÉ: I'm fine with it too. I
14 think, again, if it's a different way of saying the same
15 thing but, again, if it provides further clarity for
16 everyone else in the world, other than the engineers and
17 geologists, then I'd suggest we make that change as well.

18 CLEANUP, CLOSURE & FINANCIAL ASSURANCES DIVISION

19 CHIEF ORR: Okay. I think our only concern based
20 on the points that Chuck was raising earlier is it could
21 bring up the question of "what's a unit"? Which if we say
22 unit cost, we know it's a unit cost as opposed to
23 what -- you know, so that's our -- that would be our only
24 question, that this --

25 COMMITTEE MEMBER DANZINGER: Is that a material

1 issue or -- I mean --

2 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

3 VLACH: Well, "unit cost" is a term of art that
4 engineers are familiar with when they're estimating. You
5 see that all the time, unit costs. You know, one ton of
6 dirt, what's the cost?

7 COMMITTEE MEMBER PEACE: Couldn't it be current
8 cost on a unit cost basis?

9 CHIEF COUNSEL BLOCK: I have an idea.

10 COMMITTEE MEMBER DANZINGER: Let me look at it,
11 because we --

12 CHIEF COUNSEL BLOCK: This is Elliot again. You
13 know, I'm going to try and speak loud enough.

14 Suppose --

15 CHAIRPERSON MULÉ: I can hear you, Elliot.

16 CHIEF COUNSEL BLOCK: Okay, great.

17 Suppose we -- I'm asking this as a question to
18 staff. Suppose we had the best of both worlds. We made
19 the change that was just suggested and then we put in
20 parenthesis, in quotes the term "unit cost".

21 CLOSURES & FINANCIAL ASSURANCES BRANCH MANAGER

22 VLACH: That would work.

23 COMMITTEE MEMBER DANZINGER: Look at that. There
24 you go.

25 CHAIRPERSON MULÉ: Hey, you sound like me. How

1 do I --

2 COMMITTEE MEMBER DANZINGER: Take the rest of the
3 day off.

4 He did it with brevity.

5 (Laughter.)

6 CHIEF COUNSEL BLOCK: Ouch.

7 COMMITTEE MEMBER DANZINGER: Okay. And this only
8 requires consensus of the Board, correct? Not a vote of
9 the Committee.

10 CHIEF COUNSEL BLOCK: Correct.

11 COMMITTEE MEMBER DANZINGER: So we have consensus
12 on moving forward with a 15-day comment period on the regs
13 as presented and revised here today?

14 CHAIRPERSON MULÉ: I agree.

15 COMMITTEE MEMBER PEACE: I agree.

16 COMMITTEE MEMBER DANZINGER: Okay. So be it.

17 Thank you.

18 CHAIRPERSON MULÉ: Thank you all very much.

19 COMMITTEE MEMBER DANZINGER: This Committee
20 meeting is -- Special Committee meeting is adjourned.

21 (Thereupon the Special Permitting and Compliance
22 Committee adjourned at 10:45 a.m.)

23

24

25

1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California Integrated Waste Management Board,
7 Permitting and Compliance Committee meeting was reported
8 in shorthand by me, James F. Peters, a Certified Shorthand
9 Reporter of the State of California, and thereafter
10 transcribed into typewriting.

11 I further certify that I am not of counsel or
12 attorney for any of the parties to said meeting nor in any
13 way interested in the outcome of said meeting.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 27th day of November, 2007.

16

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